

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

BEFORE THE ADMINISTRATOR
SOUTH CAROLINA DEPARTMENT
OF CONSUMER AFFAIRS

DOCKET NO. 0124

THE SOUTH CAROLINA)
DEPARTMENT OF CONSUMER)
AFFAIRS,)
)
PETITIONER,)
)
vs.)
)
TRIANGLE CITY PAWN OFFICE, INC.,)
F/K/A TRI-CITY LOAN OFFICE &)
HUGH BRUCE FLOYD,)
INDIVIDUALLY,)
)
RESPONDENT.)
_____)

SUPPLEMENTARY
ORDER

This case began with the Petitioner's Notice of Hearing and Petition for the Respondent to show cause why Respondent's Special Deposit Bond # 68272146 issued by Western Surety Company and made payable to the Administrator of the Department of Consumer Affairs should not be assessed to compensate those members of the public who may have a cause of action against Respondents for violations of the South Carolina Pawnbroker Act, *S.C. Code Ann. § 40-39-10 et seq.* (Supp. 2000).

The initial hearing was held on September 25, 2001, at Landmark I, 3600 Forest Drive, 3rd Floor, Columbia, South Carolina. The Respondents did not appear at the hearing.

The present supplementary proceeding in Docket No.0124 was held on March 15, 2002, at Landmark I, 3600 Forest Drive, 3rd Floor, Columbia, South Carolina. Petitioner was represented by its attorney Helen Fennell. The Respondents did not appear at this hearing.

STATEMENT OF CASE

As a result of the September 25, 2001, hearing an Order was issued and served on Respondents Triangle City Pawn Office and Hugh Bruce Floyd at their last known address. (Exhibit #8). A copy of this Order was also served on Western Surety Company who carried the bond on

Respondents' pawn shop. (Exhibit #9). Respondents did not acknowledge this Order, orally or in writing.

The Order required the Petitioner to publish notice(s) in the local newspaper(s) advising consumers affected by Respondents closing that they might file a complaint and a sworn affidavit of their loss. Such affidavits would be used to substantiate the consumer's loss and might be used in lieu of live testimony at a damages hearing.(Exhibit #8, p.4). Petitioner published notice of taking consumer affidavits and supplementary proceedings in The State Newspaper on January 27, 2002, (Exhibit #12) and in the Lexington County Chronicle & Dispatch News on January 24, 2002. (Exhibit #13). The Petitioner was also required to notify law enforcement in Lexington County of the Order, which it did by letter of October 22, 2001. (Exhibit #10).

Respondents' bonding company acknowledged receipt of the Order on October 22, 2001, and requested information concerning payment of claims as well as the fact that it was attempting to contact Respondent Hugh Bruce Floyd for his position and resolution of the claims. (Exhibit #11). Petitioner's attorney Ms. Fennell informed the tribunal that she spoke by phone with the bonding company's representative Mr. Donohue on Friday March 8, 2002, and was informed that the bonding company had been unable to contact Respondent Floyd, and also would not be making an appearance at the damages hearing since there appeared to be only one or two claims against the bond. Ms. Fennell also apprised the Court that at present there was only one claim, as the complaint submitted by Greg Favor had been satisfactorily resolved. (Exhibit #5).

Petitioner then called its only witness, consumer Eugene John Draine who had submitted a complaint with the Department on January 14, 2002. Mr. Draine testified that he pawned a Colt Match Target gun and case on September 15, 2000, at Triangle City Pawn Office. He made renewal payments of \$47.50 every month from October 15, 2000, until November 15, 2001, for a total of \$522.50.(Exhibit #14). Mr. Draine returned to Triangle City Pawn Office on December 15, 2001, to redeem his gun, however the Pawn Shop was closed and he thereafter could not retrieve his gun.(Exhibit #14). Mr. Draine testified that the gun he pawned was very similar to the one shown in

the “Gun Buyer’s Annual” 2002. (Exhibit #16). His gun, he stated, was approximately a 1997 model, however, his was a larger caliber than the one shown in the “Gun Buyer’s Annual”. He estimated that the value of the gun and case was approximately \$1,000.00.

FINDINGS OF FACT

Based on evidence presented by staff at the hearing, I make the following findings of fact:

- 1.) Respondents were served by certified mail with the Order in Docket No. 0124 on October 10, 2001. (Exhibit #8).
- 2.) Respondents’ bonding company Western Surety Company was served with the Order in Docket No. 0124 by certified mail on October 16, 2001.(Exhibit #9).
- 3.) The Order allowed Petitioner to take claims by affidavit and/or live testimony concerning damages suffered by consumers.(Order in Docket No. 0124, p. 4)
- 4.) Petitioner published notice of taking claims from consumers in The State Newspaper on January 27, 2002, and the Lexington Chronicle & Dispatch News on January 24, 2002, (Exhibits #12 & #13, respectively) as per the Order in Docket No. 0124.
- 5.) Respondents have at least one outstanding open complaint with the Department which has not been answered or resolved by Respondents.(Testimony of Eugene John Draine and Exhibit #14).
- 6.) Consumer/Pledgor Eugene John Draine pawned his Colt Match Target gun and case prior to April 24, 2001. (Testimony of Draine and Exhibit #14).
- 7.) Consumer/Pledgor Eugene John Draine paid interest to Triangle City Pawn Office of \$522.50 on his pledged Colt Match Target gun and case. (Testimony of Draine and Exhibit #14).
- 8.) The value of consumer Eugene John Draine’s Colt, Match target gun and case is approximately \$1,000.00 .(Testimony of Draine and Exhibit #16).

CONCLUSIONS OF LAW

Based on evidence presented by staff at the hearing, I make the following conclusions of law:

- 1.) The Department has jurisdiction over this matter pursuant to the South Carolina

Pawnbrokers Act, *S.C. Code Ann.*, § 40-39-10, *et seq.* (Supp. 2001).

2.) Respondents were timely and properly served with the Order in Docket No. 0124 in this matter, pursuant to *S.C. Code Ann.* §1-23-350 (Supp. 2001).(Exhibit # 8).

3.) Respondents bonding Company Western Surety Company was timely and properly served with the Order in Docket No. 0124 in this matter, pursuant to *S.C. Code Ann.* §1-23-350 (Supp. 2001).(Exhibit # 9).

4.) The service of the Order in Docket No. 0124 on Respondents and the publication of the notice of taking claims is sufficient to put the Respondents on notice that Petitioner would process consumer/pledgor damage claims from Respondents' bond by affidavit at a damages hearing should Respondent not resolve these claims, pursuant to *S.C. Code Ann.* §§ 1-23-320, 1-23-330 & 1-23-350 (Supp. 2001).(Exhibit # 8).

5.) The service of the Order in Docket No. 0124 on Western Surety Company is sufficient to put Respondents' bonding company on notice that Petitioner would process consumer/pledgor damage claims from the bond by affidavit at a damages hearing should Respondents not resolve these claims, pursuant to *S.C. Code Ann.* §§ 1-23-330 & 1-23-350 (Supp. 2001).(Exhibit # 9).

6.) Special Deposit Bond #68272146 issued by Western Surety Company and made payable to the Administrator of the Department of Consumer Affairs is for the use of the State as well as any members who may have a cause of action against Respondents for transactions occurring prior to April 24, 2001. (Exhibit # 2 and Order in Docket No. 0124, p. 4).

7.) As the Administrator of the Department of Consumer Affairs I am required to receive and act on consumer complaints arising out of the production, promotion or sale of consumer goods and services, of which Complaint No. 0200149 of Eugene John Draine is one, pursuant to *S.C. Code Ann* § 37-6-117.

8.) An owner of personal property is presumed to know the value of his property and is competent as a lay person to testify as to the value of that property. *Nelson v. Coleman*, 249 S.C. 652, 155 S.E. 2d 917 (1967). *See also*, Collins, "South Carolina Evidence", §8.2, 1995.

IT IS THEREFORE ORDERED, that:

- (1) Respondents's Special Deposit Bond #68272146 issued by Western Surety Company and made payable to the Administrator of the Department of Consumer Affairs be accessed to satisfy the consumer complaint of Eugene John Draine in the amount of \$1,000.00.
- (2) Consumer complainants may continue to submit verified affidavits of damages, or loss, acceptable to the Department in lieu of live testimony for a period of two years from the date of this damages hearing, March 15, 2002.
- (3) Monies from Respondents's Special Deposit Bond #68272146 will be made available for consumer redress for a period of two years from the date of this damages hearing, March 15, 2002.
- (4) In addition to Respondents, Petitioner will serve copies of this Supplementary Order on Western Surety Company issuer of Special Deposit Bond #68272146.

IT IS FURTHER ORDERED that:

- (1.) Upon service of this Order on Respondents, the Staff will also provide the West Columbia Police Department and Lexington County Sheriff's Department with copies of this Supplementary Order; and
- (2.) Staff is to place copies of this Supplementary Order on the Departmental Web site.

IT IS SO ORDERED.

s/ Philip S. Porter
Philip S. Porter, Administrator
South Carolina Department of
Consumer Affairs

April 5, 2002
Columbia, South Carolina